

CASE SUMMARY

Broward County Case Number: CACE02004211

Court Type: Civil Division - Circuit Court

Incident Date: N/A

Court Location: Central Courthouse

Magistrate ID / Name: N/A

State Reporting Number: 062002CA004211AXXXCE

Case Type: Products Liability

Filing Date: 03/01/2002

Case Status: Disposed

Judge ID / Name: 03 Henning, Patti E.

Style: George McCormack , et al Plaintiff vs. Keller Ladders Inc Defendant

Party Detail

Party Type	Party Name	Sex	Race	D.O.B.	D.O.D.	Attorneys / BarID	
Plaintiff	McCormack, Deborah					★ Herman, Peter G Retained BarID: 353991	
Plaintiff	McCormack, George					★ Herman, Peter G Retained BarID: 353991	
Doing Business As	Kli Global Inc						
Now Known As	KKI Inc						
Defendant	Keller Industries						
Defendant	Keller Ladders Inc					★ Mowers, Jeffrey Arthur Retained BarID: 508240	

Key Dates - Future Scheduled Events

There is no key date information available for this case.

Related Cases

There is no related case information available for this case.

 Case Detail

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1 APPEARANCES:	1 presented to the trier of the fact. So whether or
2	2 not that theory, if you will, has any validity, it
3 FOR THE DEFENDANT:	3 has never been presented to this court in anything
4 RICHARD A. SACHS, ESQUIRE	4 other than a response to a motion JNOV.
5 Melito & Adolfson	5 If, in fact, that theory had some validity, it
6 The 900 Building	6 should have been pleaded, and it should have been
7 Suite 203	7 addressed by the trier of the fact. It was not. The
8 900 S.E. 3rd Avenue	8 pleadings on file in this case are quite
9 Fort Lauderdale, Florida 33316	9 straightforward. The pleading is that the defendant,
10 (954) 728-1280	10 KLI, manufactured the accident ladder, and as a
11 PAUL KAULAS, ESQUIRE	11 result they are liable on a products liability basis.
12 McVEY & PARSKY, LLC	12 Straightforward claim of products liability
13 30 North LaSalle Street	13 against the defendant, KLI.
14 Suite 2100	14 THE COURT: What did your answer say?
15 Chicago, Illinois 60602	15 MR. KAULAS: Deny.
16 (312) 551-2130	16 THE COURT: Now, did it deny it manufactured
17 FOR THE PLAINTIFF:	17 it or did it deny it manufactured it negligently?
18 PETER G. HERMAN, ESQUIRE	18 MR. KAULAS: Denied all allegations of
19 Tripp, Scott, P.A.	19 manufacturer.
20 110 S.E. Sixth Street	20 THE COURT: The reason I ask that, is that
21 Fort Lauderdale, Florida 33301	21 never seemed to be an issue in this case. I mean,
22 INDEX	22 there was never any testimony --
23	23 MR. KAULAS: Well, it wasn't an issue.
24	24 THE COURT: Did you ever move for a summary
25	25 judgement on that issue?
3	5
1 THE COURT: Good morning. Welcome to Pinellas	1 MR. KAULAS: No.
2 County. And we're here on the case of McCormack vs.	2 THE COURT: Why?
3 Keller Ladders, Inc.	3 MR. KAULAS: Because we have the right to
4 MR. KAULAS: May I proceed, Your Honor?	4 defend the case on the pleadings as they stand.
5 THE COURT: You may.	5 THE COURT: I know you had that right, but why
6 MR. KAULAS: As The Court is aware, we are	6 didn't you move for a summary judgment?
7 here on a motion for a verdict JNOV. I don't know	7 Strategically, wouldn't that have been the logical
8 whether The Court has seen the written response.	8 thing to do and end the whole thing right there?
9 THE COURT: I have. I have read all the	9 MR. KAULAS: At that particular juncture, the
10 motions and the replies.	10 plaintiff could make the same claim. The plaintiff
11 MR. KAULAS: By virtue of the time element, we	11 could then amend its pleadings and claim that there
12 have not filed a written response or written reply	12 was an identity between the actual manufacturer and
13 to the plaintiff's response; however, I'll address	13 the entity which it sued. The very same position
14 those issues orally.	14 that the plaintiff's attorney now takes, he could
15 The -- the thrust of the plaintiff's response	15 have taken by way of an amended pleading, and created
16 to our motion for verdict NOV appears to be the	16 an issue of fact which we believe does not exist.
17 plaintiff takes the position that the entity, Keller	17 THE COURT: I don't follow that. I mean, it
18 Industries, Inc., and Keller Ladders, Inc., is the	18 seems to me if you're saying that Keller Ladders,
19 same entity, and as a result, the judgment -- If a	19 Inc. is not the proper defendant, that it was not
20 judgment is to be entered against Keller Ladders,	20 the manufacturer of the ladder, and you move for a
21 Inc. or KLI, that is based upon the fact that these	21 summary judgment, Keller Ladders would be out.
22 parties are legally identical.	22 MR. KAULAS: According to the plaintiff's
23 My first comment with reference to that theory	23 position right now, Keller Ladders should be in,
24 is that that theory was never pleaded. The issues of	24 based upon the fact that the plaintiff takes the
25 fact that arise from that theory have never been	25 position that Keller Ladders, Inc. or KLI, is the

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1	very same thing as the manufacturer. That's their	1	suit February 26 --
2	position now. That's what they are saying now.	2	THE COURT: Wait a minute. This ladder was
3	That's what their response would have been if a	3	manufactured in '94, wasn't it?
4	motion for summary judgement was filed.	4	MR. KAULAS: '96. April '96. I'm sorry.
5	They're doing -- they are saying precisely now	5	THE COURT: I'm reading your defendant's
6	what they would have said if we had filed a motion	6	motion, and it says it was explained to The Court
7	for summary judgement, except they are now attempting	7	that the ladder was manufactured in 1994.
8	to do it after the fact without any evidentiary	8	MR. KAULAS: That's correct. I'm sorry. I'm
9	support for that theory.	9	confusing my -- there's another April '96 date. I
10	May I continue?	10	will correct the record. The ladder was manufactured
11	THE COURT: Yeah. Let me ask you this	11	in '94. Okay. The date of accident is 2000. Suit
12	question.	12	was filed February 26, '02.
13	MR. KAULAS: Sure.	13	Under the State of Florida rules, the
14	THE COURT: Did you at any time present that	14	plaintiffs would have four years in which to file
15	defense to the jury, that you were not the	15	suit. In other words, they could have filed suit
16	manufacturer of this ladder?	16	against the appropriate manufacturer as of October 3,
17	MR. KAULAS: Yes.	17	if you will, 2004.
18	THE COURT: I don't remember that coming up.	18	Interrogatories were served upon my client.
19	MR. KAULAS: We read the stipulation of the	19	The first set of interrogatories were May 30th of
20	parties to the jury. The stipulation of the parties	20	'02. And at that time, the defendant stated in
21	was --	21	answers to interrogatories that it did not know the
22	THE COURT: That's right. That just didn't	22	manufacturer of the ladder. The denial of allegation
23	seem to be the big thrust of this case.	23	of manufacturer was on file.
24	MR. KAULAS: Well, the thrust of the case was	24	In the second set of interrogatories, the
25	based upon the fact that the plaintiff sued us as a	25	plaintiff's attorney obviously is aware of the fact
		7	
1	manufacturer and we were not. That's one of the	1	that the manufacturer of the ladder is not the entity
2	elements that the plaintiff had to prove. They	2	that the plaintiffs sued. And I read you to a
3	didn't prove it. They proved nothing. And	3	question from the second set of interrogatories,
4	furthermore, not only did they not prove that	4	Page 2. "Please identify -- and this is a quote --
5	particular element, they stipulated to the contrary.	5	"Please identify with specification the business
6	However, a stipulation is not evidence until	6	relationship between the manufacturer of the subject
7	one offers that stipulation into evidence. When we	7	ladder giving rise to this action and KLI, Inc.
8	offered that stipulation into evidence, the issue no	8	setting forth any agreement between the manufacturer
9	longer existed. We were -- we had proven the	9	and KLI, Inc."
10	position that we took.	10	The answer is, "The ladder at issue was
11	To that point in time, there was no issue when	11	manufactured by Keller Industries, Inc. Keller
12	we placed that stipulation into evidence. The	12	Industries declared bankruptcy in April of 1996 in
13	stipulation, if you will, trumped any claim that KLI	13	Delaware. Keller Industries consisted of a ladder
14	was the manufacturer of the product.	14	division and building products division. In 1996,
15	May I continue, Your Honor?	15	KUA Corp. purchased the ladder division of Keller
16	THE COURT: You may.	16	Industries, including the Keller trade name."
17	MR. KAULAS: The next position the plaintiff	17	And the answer goes on.
18	takes is that somehow these two entities, KLI and	18	At this particular point, The Court can take
19	Keller Industries, Inc. are identical. And my	19	judicial notice of pleadings, if you will, and
20	prefatory remarks are, of course, they never	20	procedures in other courts. And unfortunately, I
21	pledged that, but I want to address that particular	21	only have one copy. But I have the bankruptcy filing
22	issue.	22	out of the U.S. District Court, U.S. -- United States
23	By way of background, the date of manufacture	23	Bankruptcy Court District of Delaware, the docket.
24	of the ladder was April of 1996. The date of	24	The docket indicates that on April 2, 1996,
25	accident was October 2, 2000. The plaintiff filed	25	there was a voluntary petition under Chapter 11, etc.

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1 The entity which filed for bankruptcy was Keller 2 Industries, Inc. And the docket shows that that 3 particular proceeding continued in bankruptcy until 4 the motion for final decree was November 19, 2003. 5 So the entity that manufactured the accident 6 ladder existed, was in bankruptcy, continued in 7 bankruptcy. When this lawsuit -- when the accident 8 occurred, when this lawsuit was filed, when the 9 second set of interrogatories were answered, and for 10 over a year after that particular time, plaintiff 11 never chose to file suit against the manufacturer of 12 the ladder. Didn't do it. Despite the fact that 13 they had answers to interrogatories which stated the 14 business relationship between "the manufacturer" and 15 the entity which they had sued.	1 THE COURT: I will reserve judgment on that. 2 MR. KAULAS: That's an interesting point, 3 given the fact that counsel files a motion in which 4 he makes a statement of somehow the defense has 5 somehow misled someone and there is no affidavit, 6 there's nothing other than the statement, and an 7 implication which we think is inappropriate. 8 So therefore, it is obvious from the 9 interrogatory that was sent by the plaintiff's 10 attorney, when he had two years in which to file suit 11 against the manufacturer, that he was fully aware of 12 the fact that the manufacturer of the ladder and the 13 defendant that he sued were two different corporate 14 entities. 15 The case then goes to trial. The stipulation 16 is agreed upon before trial concerning the 17 manufacturer's identity. The stipulation from an 18 evidentiary standpoint is meaningless until it's 19 offered into evidence. And when that stipulation was 20 offered into evidence at the onset of the plaintiff 21 -- excuse me -- the defense case, at that juncture 22 there was no evidence whatsoever that the defendant, 23 KLI, was responsible for the manufacture of the 24 ladder. 25 And at that juncture, the plaintiff had failed	
16 Plaintiff now takes the position that, again, 17 without filing any pleading whatsoever on the point, 18 that somehow there's an identity between an entity 19 that is in bankruptcy in the Federal District Court 20 in Delaware and an entity which they sued. 21 They suggest because two individuals, 22 Mr. Doss, Mr. Allen, who were president and CFO of 23 Keller Industries, Inc., eventually became employed 24 by Keller Ladders, Inc., that somehow we have an 25 identity of parties. Again, they have never pleaded	16	13
11	1	1
1 this. They're arguing it after the fact. 2 I'm going to provide The Court with an 3 affidavit which is recorded in the record. The 4 affidavit, which is a listing of the directors and 5 officers of KUA Corp, Keller Ladders, Inc, and KLI, 6 Inc. since 1996. 7 If The Court cares to peruse that, you will 8 see out of the numerous individuals that are either 9 officers or directors, that Mr. Doss and Mr. Allen no 10 longer were employed as -- no longer employed as a 11 matter of fact, but neither an officer or a director 12 of KLI, Inc. subsequent to 1996, I believe. Just 13 make sure. I'm sorry. Subsequent to 1997. 14 So as a result, at the time the accident 15 occurred, at the time the lawsuit was filed, at the 16 time the answers to interrogatories pointed out the 17 specific corporate history, these individuals had 18 been long gone as president and as CFO. 19 I would offer that into record as the 20 affidavit of Paul Kaulas with the attachment 21 Exhibit A showing the list of officers. 22 THE COURT: Any objection? 23 MR. HERMAN: Yeah. I object. I don't see any 24 reason for an affidavit to come into evidence at this 25 juncture of the case.	2 to prove an essential portion of the case which he 3 had -- which he had pleaded, i.e. the defendant that 4 he had sued manufactured the product. 5 Plaintiff takes the position now after the 6 fact that there is an identity, if you will, of these 7 entities; a position which he never pleaded, which he 8 never approved. He simply responds that somehow 9 that either, A, he was misled in some fashion with 10 the interrogatory which he asks. And the response 11 that he's given is unequivocal that he's fully, fully 12 aware of the differentiation between manufacturer and 13 the entity that he sued, and the response that is 14 given to the interrogatory. 15 If plaintiff believed that somehow there was 16 an identity between those two corporate -- corporate 17 corporations, then under those circumstances, it 18 was his responsibility to file an amended pleading, 19 in which he attempted to prove that there was an 20 identity; in other words, attempted to pierce the 21 corporate veil between KLI and an entity which was in 22 bankruptcy in Delaware. 23 He never filed such a pleading. And the 24 obvious reason why he didn't file such a pleading is 25 because there is no identity. They are separate	

	14		16
1	Anticipating the plaintiff's now position,	1	of any statutory cause of action which gives rise
2	plaintiff now wants to amend his complaint after the	2	to any damages which are penal in nature."
3	fact saying that, I guess, that there is somehow a	3	"On July 17, 1996, KUA Corporation changed its
4	misdemeanor. And of course that position is entirely	4	name to Keller Ladders, Inc. On October 29, 1999,
5	different from the position that he takes in response	5	Keller Ladders, Inc. sold its assets, including the
6	to our motion for a verdict NOV. He now says he	6	Keller tradename, to Werner Company, Inc, not
7	wants to amend his complaint. And of course he's	7	including liabilities. Since part of Werner's
8	violated the rules, by virtue of failing to	8	purchase agreement included the Keller tradename,
9	attach this proposed amended complaint.	9	Keller Ladders, Inc. changed its name to KLI, Inc.
10	We still have no idea what he intends to say,	10	on October 29, 1999. On May 3, 2000, KLI, Inc.
11	what he intends -- who he intends to sue, or what the	11	changed its name only in Florida to KLI, Inc, doing
12	basis or theory of that lawsuit is, based upon some	12	business in the State of Florida as KLI Global, Inc."
13	sort of pleading. As a matter of fact, one	13	
14	stage in the -- during the trial, The Court indicated	14	It would appear to me from that answer that
15	that it would allow plaintiff to amend, and no such	15	Keller Ladders, Inc. was still responsible for any
16	amendment was ever forthcoming; and likewise, hasn't	16	liabilities that arose out of the manufacture of that
17	been forthcoming thus far.	17	ladder by its predecessor.
18	Therefore, I would reserve my responses with	18	That's your answer. Not his answer.
19	reference to motion to amend because plaintiff has	19	MR. KAULAS: I realize that. But you have to
20	added that as an add-on motion.	20	sue Keller Industries, Inc. You have to sue them in
21	THE COURT: Who do you contend is the real	21	order to get indemnity from KLI.
22	party and interest in this case as far as the	22	THE COURT: I would -- I'm not sure I agree
23	defendant is concerned?	23	with that. Keller Industries sold all of its assets,
24	MR. KAULAS: Keller Industries, Inc. is the	24	including its liabilities, to a corporation that
25	manufacturer of the ladder.	25	later became Keller Ladders, Inc. And they were
			defendant -- Keller Industries would defend by saying
	15		17
1	THE COURT: The one that was in bankruptcy?	1	that we are no longer the real party of interest. We
2	MR. KAULAS: Is. Yes. Was in bankruptcy.	2	sold our company, including its liabilities, to
3	THE COURT: How about your response to	3	Keller Ladders, Inc.
4	Interrogatory 1?	4	MR. KAULAS: That would be true if, in fact,
5	MR. KAULAS: Which -- would you read the	5	there was a pleading on file which laid out a claim
6	interrogatory, Judge?	6	that Keller Industries, Inc. was responsible for the
7	THE COURT: "Please identify with specificity	7	liabilities of -- excuse me -- that Keller Ladders,
8	the business relationship between the manufacturer of	8	Inc. was responsible for the liabilities of Keller
9	the subject ladder giving rise to this action and	9	Industries, Inc. And Keller Ladders, Inc. would
10	KLI, Inc., setting forth any agreement between the	10	then respond that based upon the asset purchase
11	manufacturer and KLI, Inc."	11	agreement between these parties, you must sue Keller
12	And the response is, "The ladder at issue was	12	Industries, Inc. Because there are no third-party
13	manufactured by Keller Industries, Inc. Keller	13	beneficiaries to that agreement. •
14	Industries declared bankruptcy in April of 1996 in	14	The plaintiff failed to allege liability based
15	Delaware. Keller Industries consisted of a ladder	15	upon an agreement.
16	division and a building products division. In 1996,	16	THE COURT: That's why he wants to amend.
17	KUA Corporation purchased the ladder division of	17	MR. KAULAS: No. He wants to add a new party.
18	Keller Industries, including the Keller trademark.	18	He's taken the entirely different position. He takes
19	As a part of the transaction, Keller Industries	19	the position in our response for verdict NOV that we
20	changed its name to Relic, Inc. At the time of KUA	20	are responsible by virtue of this answer to
21	Corporation's purchase of Keller Industries Ladder	21	Interrogatory -- which incidentally, he never offered
22	Division, KUA Corporation assumed certain product	22	into evidence if, in fact, it was going to be the
23	liabilities of Keller Industries Ladder Division, but	23	basis of some pleading.
24	did not assume any liability for damages which are	24	State of Florida still requires that if you
25	punitive or exemplary in nature, or which arise out	25	have a theory of liability, you must prove it. The

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	18	20
1 theory of liability expressed by the plaintiff in 2 this case was that KLI manufactured the ladder. 3 That was the theory. The theory was not that KLI is 4 responsible based upon this Interrogatory answer. 5 If, in fact, that was the pleading, then we would 6 have gone forward with the proof of the agreement to 7 show that, no, that's not the meaning of this 8 particular answer to interrogatory. The meaning of 9 this answered interrogatory is a snapshot, if you 10 will, of the arrangement between the parties with, if 11 you will, what is the relationship? The relationship 12 has nothing to do with responding to a pleading.	1 sue the original manufacturer if that has -- the 2 original manufacturer, some time before the accident, 3 sold its business to somebody else. 4 MR. KAULAS: The Court's quandary in this 5 regard is reasonable and legitimate, but The Court's 6 quandary isn't a pleading. In other words, what 7 Mr. Herman could have done, or should have done, 8 really isn't before you on the issue for a verdict 9 NOV. What Mr. Herman should have done, of course, 10 was file lawsuit against Keller Industries, Inc., 11 which was pointed out by the answer to 12 interrogatories. They had two years in which to do 13 it.	
13 Plaintiff never pleaded that KLI, if you will, 14 was responsible by virtue of some agreement. They 15 never pleaded that. So we never responded to such a 16 pleading.	14 Plaintiff never pleaded that KLI, if you will, 15 was responsible by virtue of some agreement. They 16 never pleaded that. So we never responded to such a 17 pleading.	14 THE COURT: That's where you and I differ. I 15 think to step a -- to establish a claim, I don't 16 think they had to sue Keller Industries by virtue of 17 that agreement.
17 Now plaintiff takes the position -- it's like 18 a -- they're saying in essence --	18 THE COURT: If they had pled that, what would 19 have been your response?	18 MR. KAULAS: Well, what pleading -- I'm just 19 rhetorically -- what pleading has the agreement in 20 it? What pleading has -- if in fact this 21 interrogatory, the four corners of this interrogatory 22 establish a cause of action, where was it pleaded? 23 THE COURT: The agreement said that --
23 MR. KAULAS: Our response would be the 24 agreement.	23 MR. KAULAS: The agreement says --	23 We say this -- the four corners of this interrogatory 24 don't create a cause of action, and therefore the 25 plaintiff must at least plead something so we can
	19	21
1 responsible. 2 MR. KAULAS: Only if Keller Industries, Inc. 3 is sued. They must be sued. There are no 4 third-party beneficiaries to the agreement. 5 THE COURT: I don't see that in the -- in the 6 answer to the interrogatory.	1 address if, in fact, that's his position. 2 If that's his position -- If, in fact, that's 3 his position, why wasn't it said in the pleading? 4 THE COURT: That's why he's making a motion to 5 amend.	
7 MR. KAULAS: That wasn't the question to the 8 interrogatory. The question poised isn't in the 9 interrogatory. 10 If I may continue.	6 MR. KAULAS: No. No. Excuse me. No. At 7 this juncture he is now saying, I want to sue Keller 8 Industries, Inc. at this time. 9 THE COURT: Well, I thought the motion during 10 the course of the trial was to amend to name the 11 original manufacturer as the defendant because the 12 original manufacturer and Keller Ladders are one in 13 the same. 14 MR. HERMAN: That's correct. 15 MR. KAULAS: Well, that's what he says. He's 16 saying they are one in the same. 17 THE COURT: Because of the assumption by 18 Keller Ladders, Inc. of the liabilities of Keller 19 Industries. 20 MR. KAULAS: Well, during the course of the 21 trial -- during the course of the trial this 22 interrogatory was never read to The Court, was never 23 offered to the jury. None of this matter --	
21 Then he may have to go against the original 22 ladder company. I'm just thinking out loud on that. 23 Because I don't think it's a condition precedent to	24 THE COURT: Seemed that there was never an 25 issue on whether or not Keller Ladders, Inc. assumed	

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	22		24
1	the liabilities of Keller Industries. Was there ever	1	but if you don't buy that one, we want to amend our
2	an issue on that? You're the ones that created --	2	complaint now, and we want to sue another entity
3	you're the one's that gave them the information that	3	entirely.
4	that was the case.	4	They're saying -- they are saying, first off,
5	MR. KAULAS: We told them. They never amended	5	the reason we didn't sue Keller Industries, Inc. is
6	their pleadings.	6	because somehow we didn't think we had to --
7	THE COURT: That's why he made the motion to	7	THE COURT: But if I grant their motion as
8	amend to have the verdict confirmed or the judgment	8	they put it at trial, the second motion that you --
9	-- or the pleadings confirmed to the judgment or	9	that they raised is moot.
10	vice-versa, and that can occur when the subject to be	10	MR. KAULAS: I'm sorry?
11	corrected is strictly a ministerial type of thing. I	11	THE COURT: If I go ahead and affirm my action
12	mean, seems to me Keller Ladder Inc., Keller	12	at -- what I did at the trial, allowing them to amend
13	Industries, Inc., and Keller Ladders are one in the	13	in so far as the Industries, Inc. is concerned, then
14	same.	14	the second issue about naming Industries, Inc. as a
15	MR. KAULAS: That's --	15	second party for them to sue is moot. Correct?
16	THE COURT: Your defense wouldn't have been	16	MR. KAULAS: I'm not quite sure how it can be
17	any different if they had sued Keller Ladders	17	moot.
18	-- Keller Industries, would it?	18	THE COURT: Well, because they -- they have
19	MR. KAULAS: Of course it would be.	19	got their judgement, and they have got the right
20	THE COURT: What would it have been? No. I	20	party in the judgement. So why would they want to
21	mean as to the substance, not as to the formal part.	21	sue them again?
22	MR. KAULAS: As far as the trial of the	22	MR. KAULAS: I'm -- I'm at a loss.
23	lawsuit, if they alleged that they could pierce the	23	THE COURT: Maybe I misunderstood you. You
24	corporate veil, which they are responding now --	24	said that now, before me, they have two-fold motion,
25	they're saying, we can pierce corporate veil. At	25	right?
	23		25
1	least that's one of the responses they make.	1	MR. KAULAS: They have a response to our
2	THE COURT: I don't know if that's a correct	2	motion for a verdict NOV. That's the response. The
3	response. What I'm saying is, they are just	3	response --
4	following the trail of the liabilities of Keller	4	THE COURT: Name again -- say it again what
5	Industries.	5	the two-part motion is, or two-part response that
6	MR. KAULAS: Based upon what?	6	they have affirmed, as you last stated it.
7	THE COURT: Based on your interrogatory.	7	MR. KAULAS: Okay. As I -- as I interpret
8	MR. KAULAS: They have never offered it into	8	what they filed in response to our motion verdict
9	evidence.	9	NOV, what I -- they say two things in this particular
10	THE COURT: Based on -- you asked to take	10	document.
11	judicial notice of all this stuff, so --	11	THE COURT: Okay.
12	MR. KAULAS: It -- wait a second. I'm	12	MR. KAULAS: The first thing.
13	responding to what they have put forth in a response,	13	THE COURT: One.
14	Judge. I'm -- and of course he's objecting to it.	14	MR. KAULAS: One is, they were misled by our
15	So my point being, in this -- if, in fact, they	15	response to interrogatories. They didn't really have
16	believed that they had a cause of action against KLI	16	to file suit against Keller Industries, Inc. based
17	based upon an asset purchase agreement, why didn't	17	upon the answers to interrogatories. That's their
18	they plead it? They never pleaded it. Never did.	18	one position.
19	We say, no --	19	THE COURT: Okay.
20	THE COURT: That's why they're making the	20	MR. KAULAS: Then they recite throughout the
21	motion to amend.	21	document that The Court gave them leave to amend and
22	MR. KAULAS: Well, as I read what they are	22	they amended their complaint. They haven't done
23	doing now, they are taking -- taking two positions	23	that. They have never amended their complaint. They
24	simultaneously. They are saying, Judge, we were led	24	never filed an amendment to The Court. So all the
25	down the garden path by the answer to interrogatory,	25	stuff about they amended their complaint and The

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	26		28
1	Court gave them leave, I have doubt whether The	1	or you, because you won. The mere fact that they may
2	Court, in fact -- based upon the record as I read it,	2	go against Keller Industries, Inc., that's no -- not
3	The Court actually gave them leave to amend.	3	your problem. That's another entity, as you're
4	But assuming, for discussion sake, The Court	4	saying. Maybe another lawyer. Another insurance
5	did give them leave to amend, they have never	5	company. Who knows. So that's not a problem that
6	followed through, they have never filed anything,	6	you have. It would just seem to me that that's an
7	they have never amended anything. And then	7	issue of whether or not Keller Ladders, Inc. was the
8	furthermore, if The Court -- we would take the	8	real party of interest and the case should have been
9	position that if The Court gave them the leave to	9	determined by a motion for summary judgment and the
10	amend, there's no record that justifies an	10	case gone away. Period. Bingo. Out. Ended.
11	amendment based upon what The Court heard, at least.	11	But that's just a matter of observation. It
12	The Court didn't see any Interrogatories. The Court	12	has really nothing determinative of the very issues
13	saw nothing.	13	before me today.
14	There's about a paragraph of a representation	14	Are you finished?
15	made by Mr. Herman. I don't think The Court would	15	MR. KAULAS: Yes.
16	grant leave to amend based upon that sort of record.	16	MR. HERMAN: Judge, in brief response --
17	But assuming, for discussion sake, that's what they	17	actually --
18	did, they still haven't amended their complaint.	18	THE COURT: Don't be brief just because
19	Now what they're doing is they're attempting	19	you think you know what I'm going to do, because I'm
20	to amend -- they filed an add-on motion here to amend	20	not sure yet. You better be thorough in order to --
21	their complaint. That matter has not been heard.	21	MR. HERMAN: I may not be that brief.
22	That raises an entirely different issue, and that is	22	Notwithstanding the fact that representation from
23	whether or not you can add another party to a lawsuit	23	both counsel at the trial was that I would have no
24	under these circumstances. Of course, we take the	24	problem in terms of the stipulation with regard to
25	position, and the case law supports us, that that's	25	manufacturer, manufacturing of the ladder and putting
	27		29
1	absurd. Especially when they have total, complete,	1	it into the stream of commerce.
2	unadulterated knowledge that there were two separate	2	On my witness list was Lillian Macia. You
3	corporate entities. There is no confusion here.	3	remember her name coming up. She was the corporate
4	THE COURT: Okay. Well, it just is -- without	4	representative of KLI who answered all of the
5	making a conclusive finding on the issue, it just	5	interrogatories, who answered insurance purposes
6	seems to me, by virtue of that response, the	6	letters, representing to us that KLI was the
7	plaintiff was justified in relying that Keller	7	responsible party. Okay? I had her on my witness
8	Ladders, Inc. was the real party of interest in this	8	list. I also asked you at trial in the event that I
9	case when the response says that Keller Ladders, Inc.	9	need to call her for rebuttal, I requested that. It
10	bought the liabilities of the manufacturer of the	10	neither was granted or denied. But there were
11	ladder. And I really didn't see that as one of the	11	representations made to me of that effect. That's
12	issues in the case.	12	not on the record, okay.
13	I tried a case with whether or not the ladder	13	But what is on the record is the stipulation
14	was defectively manufactured, and it was the	14	that he talks about. I didn't follow the convoluted
15	proximate cause of the plaintiff's injuries. That's	15	argument that Mr. Kaulas stated with regard to that
16	the case I tried -- I thought I was trying. And I	16	stipulation. The fact of the matter is, is when the
17	get back to my original proposition this morning.	17	stipulation was put in that Keller Industries was the
18	If, in fact, the defendant felt that it was not	18	manufacturer of the ladder, at that point in time --
19	liable, because legally liable that it should have	19	and this is where Mr. Kaulas gets liability and
20	determined that, at least attempted to make that	20	indemnity confused. Two times that's confused. At
21	determination to a motion for summary judgment.	21	that point in time, I also moved to amend the
22	And whether or not they could have amended at	22	stipulation. And you granted that motion to amend
23	that point if they lost the motion for summary	23	the stipulation to reflect --
24	judgement, and Keller Ladders, Inc. was out, should	24	THE COURT: I'm sorry. Go ahead.
25	be no problem -- no concern of Keller Ladders, Inc.	25	MR. HERMAN: My understanding is you not only

8 (Pages 26 to 29)

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		30	
1	granted the motion to amend the pleading, but you	1	at 8 -- so Williams vs. Palm Beach County
2	also granted on your own a motion to amend the	2	Beach Community College is found at 861
3	stipulation, reflecting that KLI was the proper	3	And that case is pretty much directly on
4	party. And so, by them putting the stipulation in	4	what we're dealing with here.
5	saying that Keller Industries manufactured the	5	The next case is Thomas vs. Taylor Creek
6	ladder and you granting the amendment saying that now	6	Marina. Again, in that case, what happened was the
7	Keller Ladders is the proper party at interest, I	7	plaintiff named Taylor Creek Marina, Inc., and
8	don't see any way they can come back and argue that	8	instead the correct defendant was Taylor Creek Marina
9	we didn't have the correct party in there. And if we	9	of Fort Pierce. And The Court allowed an amendment
10	didn't, the motion to amend is appropriate procedure	10	for that also.
11	to take.	11	There is one case that I would like to, in
12	And, you know, by the way, what Mr. Kaulas	12	particular, cite and read from to The Court. That's
13	says may be the law in Illinois -- and it's	13	Palm Beach County vs. Savage Construction
14	Interesting that their motion does not cite any case	14	Corporation, which is found at 627 So.2d 1332. In
15	law, and Mr. Kaulas has not brought any case law up	15	that case, It's talking about amendments and the
16	today, although he says that the case law supports	16	Relation Back Doctrine. And The Court there cites
17	his argument.	17	Rule 1.190(c) talking about amendments and related
18	I would like to cite to The Court a number of	18	back to the original pleading. And it talks about it
19	cases to address this issue, and they are right on	19	being well settled that the rule is to be construed
20	point. And I cited them in my motion. And If I	20	liberally.
21	could approach to The Court --	21	Then The Court goes on to say -- and I think
22	THE COURT: You may.	22	this is particularly applicable in this case in light
23	MR. HERMAN: Okay. There are several cases in	23	of the interrogatory responses that I have outlined
24	here. The first one is almost identical to this --	24	in my motion -- my response to their motion. It says
25	to what happened here. Of course you're not going to	25	in the spirit of explaining the rules of liberality,
		31	
1	have the exact factual scenario, but basically in	1	the -- sorry.
2	that case, a college student brought an action	2	The case that they are citing from
3	against Palm Beach College and a security	3	actually comes out of here, Cabott vs. Clearwater
4	corporation. And what he did, was he named the	4	Construction. It says, In the spirit of explaining
5	security company as Ace Security, Inc. and not Ace	5	the rules of liberality, the Florida Supreme Court
6	Security Company. But in that case, and all of the	6	admonished litigants. Now the objective of all
7	rest of the cases that you see up there, the company	7	pleading is merely to provide a method of setting out
8	that sued comes forward and says, hey, we're not the	8	the opposing contentions of parties. No longer are
9	company. Hey, we don't have any responsibility here.	9	we concerned with the tricks -- quote -- "tricks and
10	And that's not -- and that's the point that	10	technicalities of the trade." The trial of a lawsuit
11	you made, that they have a burden to come forward	11	should be a sincere effort to arrive at the truth.
12	to say something about it. And they didn't. And, in	12	It is no longer a game of chess in which the
13	fact, that kind of begs the question as to why did	13	technique of the maneuver captures the prize.
14	they defend this entire case if they weren't the	14	And that is exactly what the defendants are
15	responsible party?	15	trying to do here. They would have never tried this
16	And that's, again, where you get indemnity and	16	case differently. It would have been the same
17	liability confused. The fact of the matter is, the	17	lawyers trying this case. And there is no prejudice
18	jury found the ladder was defective and KLI --	18	to KLI, or for that matter Keller Industries, who is
19	Mr. Kaulas is right. KLI and Keller Industries, in	19	not around anymore. So even if I did sue them, the
20	my mind, are very, very similar companies, or at	20	responsibility is going to lay in the lap of KLI, and
21	least KLI is a successor, what we refer to as	21	there would be no difference in terms of who would
22	successor corporation. Those cases that I handed you	22	ultimately pay that judgment according to their
23	are cases that talk about that.	23	interrogatories.
24	Just let me cite them for the record.	24	So the fact of the matter is they put a
25	Williams vs. Palm Beach Community College is found	25	stipulation into evidence. The stipulation was for

9 (Pages 30 to 33)

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	34		36
1	Keller Industries. I am asking -- I did at court,	1	Industries was the manufacturer of the ladder.
2	and I think I did at trial, and I think this court	2	THE COURT: Please identify all responsible
3	granted my motion to amend, to allow Keller	3	entities including name of the corporation, and
4	Industries to be added as a party.	4	applicable insurance company, if any, who is
5	The other cases I would cite is -- are Sexton	5	responsible for payment of a jury verdict or
6	vs. Panning Lumber Company. Same issue about	6	settlement in this action --
7	naming a different company. I think that was a	7	MR. KAULAS: This action.
8	successor company. And they looked at factors in	8	THE COURT: -- should plaintiff prevail in the
9	that case as to what constitutes a party that was	9	instant action.
10	related or a successor company.	10	MR. KAULAS: And the only entity that's being
11	Clearly as outlined in my response to their	11	sued here is Keller Ladders, Inc, KLI, Inc. Not
12	motion, I believe that there's enough there to show	12	Keller Industries, Inc.
13	that Keller Industries --	13	MR. HERMAN: Boy, I tell you.
14	THE COURT: Well, let me refer to	14	THE COURT: Now you and I part ways on that
15	Interrogatory 2, if you would, please. Plaintiff's	15	one.
16	Interrogatory 2. Have you got it there?	16	MR. KAULAS: Well, I --
17	MR. KAULAS: Yes.	17	THE COURT: But the action against -- the
18	THE COURT: Please identify all responsible	18	action against Keller Ladders is for the manufacturer
19	entities, including name of the corporation and their	19	and distribution of a defective ladder.
20	applicable insurance company, if any, who is	20	MR. HERMAN: Not only that, Judge.
21	responsible for payment of the jury verdict or	21	MR. KAULAS: Judge, excuse me. If I may, the
22	settlement in this action should plaintiff prevail	22	manufacturer of the ladder is Keller Industries,
23	in the instant action.	23	Inc. It has never been a defendant in this lawsuit.
24	Response, "Other than those liabilities for	24	Never. They have never filed a pleading against
25	damages which are punitive, or exemplary in nature,	25	Keller Industries, Inc. The plaintiff in this case
	35		37
1	or arise out of any statutory cause of action which	1	sued an entity, which we have stipulated and they
2	gives rise to any damages which are penal in nature,	2	have stipulated, did not manufacture the ladder.
3	KLI, Inc. and KLI, Inc., doing business in the State	3	That only became evidence during the course of our
4	of Florida as KLI Global, Inc.	4	case.
5	MR. KAULAS: They were a defendant. They	5	THE COURT: If you read the answers to the
6	would be responsible if, in fact, the plaintiff	6	Interrogatories 1 and 2, they're material to each
7	proved a case against KLI. Of course. The response	7	other. To me, it does not create an issue of whether
8	is that -- that's the appropriate response. If you	8	or not the right person has been sued. To me, it
9	prove --	9	clearly states that Keller Ladder, Inc. is the one
10	THE COURT: But it changed its name. It	10	who is the proper party before The Court, and all the
11	didn't change anything else but its name.	11	pleadings and all the answers to interrogatories as
12	MR. KAULAS: I'm sorry. What?	12	to the merits of the case, whether or not it was a
13	THE COURT: Your Keller Ladders, Inc.	13	defective ladder, have been addressed by the Keller
14	changed it name to KLI, Inc. Only changed its name.	14	Ladder, Inc. as if they knew everything that had
15	MR. KAULAS: Judge, the manufacturer is Keller	15	happened to this ladder, and were going to answer the
16	Industries, Inc.	16	discovery as the real party of interest. Isn't that
17	THE COURT: Well, I'm not on the same --	17	true?
18	MR. KAULAS: The answer to the	18	MR. KAULAS: No.
19	interrogatory --	19	THE COURT: No?
20	THE COURT: The answer to the interrogatory	20	MR. KAULAS: No. The --
21	says KLI, Inc. is responsible.	21	THE COURT: You didn't prepare these answers
22	MR. KAULAS: If you prove a case against KLI,	22	to interrogatories?
23	Inc. Not if you prove a case against Joe Smith, Joe	23	MR. KAULAS: Yes. The answers --
24	Blow, or Keller Industries, Inc.	24	THE COURT: Were there not some answers in
25	MR. HERMAN: But they stipulated Keller	25	here about how the ladder was manufactured?

10 (Pages 34 to 37)

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	38		40
1	MR. KAULAS: Judge, excuse me. In order to	1	that's why they won't amend the pleading, because
2	sue on a theory of successor liability as the	2	we raised the statute of limitations in defense,
3	plaintiff now contends he should have sued, in order	3	because they didn't sue in an appropriate time.
4	to sue on a theory of assumption of liability based	4	MR. HERMAN: That's the whole purpose of the
5	upon a contract, all of that must be in a pleading.	5	Relation Back Doctrine. Mr. Kaulas may not be
6	You must plead it. You can't simply say after a	6	familiar with that, but all the cases that I referred
7	judgement, Oh, by the way, I want to change my theory	7	to you there talk about the Relation Back Doctrine in
8	of liability here.	8	exactly these circumstances.
9	Because before this court, The Court doesn't	9	So the amendment if granted, which I believe
10	have any documentation which has the agreement	10	it was granted, would relate back to the time of
11	itself. It doesn't have anything other than the	11	filings. And that is not a issue, and that is not a
12	speculation that these answers to interrogatories may	12	prejudice --
13	create liability.	13	THE COURT: I am going to deny the motion for
14	Why -- the court should be asking Mr. Herman,	14	a judgement notwithstanding the verdict in so far as
15	why, Mr. Herman, didn't you sue Keller Industries,	15	the amendment is concerned. And I think the only
16	Inc? Why didn't you sue them? If you -- as	16	thing that really needs to be amended is just the
17	Mr. Herman's response is, I didn't have to sue them.	17	style of the case to say that Keller Ladders, Inc.
18	I didn't have to sue them. Then The Court should	18	is a successor to Keller Industries.
19	say, well, then why, Mr. Herman, are you asking to	19	MR. HERMAN: And would The Court want me to
20	sue them now?	20	file a pleading to that?
21	THE COURT: You're absolutely correct. You	21	THE COURT: Yes. Absolutely. Well, in order
22	are 100% correct. Couldn't argue with you about you	22	-- an order allowing the amendment to read as
23	have to allege the standing of the defendant as a	23	follows, and then that's what the -- that's what the
24	party -- as a real party at interest. But also the	24	amendment will read.
25	law says that you can amend your pleadings after the	25	MR. HERMAN: Okay.
	39		41
1	judgement to have the judgment conform to the -- or	1	THE COURT: Okay. Now the second one is on
2	amend your pleadings to have your pleadings conformed	2	the question of liability. Wasn't there a second
3	to the judgment.	3	issue on that?
4	And I -- that's the whole purpose of that, is	4	MR. KAULAS: I'm sorry. What -- yes, Your
5	when there is that type of mistake that comes up that	5	Honor.
6	is not material to the -- not affect the case in	6	THE COURT: I thought you had a three-fold
7	chief, and that was whether or not this ladder was	7	argument in this thing. One was what you just
8	defectively manufactured, that the pleadings can be	8	argued. The other one was question of whether or not
9	amended after the judgement.	9	there was -- the evidence justified a verdict for the
10	MR. KAULAS: To the dis -- but to the	10	plaintiff that the ladder was manufactured
11	disadvantage of the defendant that has the respons-	11	defective, and then --
12	-- has the right --	12	MR. KAULAS: There were two, Your Honor.
13	THE COURT: How is the defendant disadvantaged	13	THE COURT: Two? Well, let's see. Okay.
14	in this case?	14	This other one, on the -- another issue, the record
15	MR. KAULAS: Because Keller Industries, Inc.	15	does not disclose whether The Court amended the joint
16	has the absolute right in the State of Florida to	16	pretrial stipulation at trial. That issue is moot.
17	rely upon the statute of limitations. It has the	17	Let's hear the -- unless you abandoned that part of
18	absolute right as a defense. A defense. And by	18	it.
19	saying after the fact it doesn't really make any	19	MR. KAULAS: Well, no, we didn't abandon it.
20	difference, you are depriving --	20	The record is clear. The Court did not allow an
21	THE COURT: Was the statute of limitations	21	amendment.
22	raised as a defense in this case?	22	THE COURT: Okay. No. I mean as far as the
23	MR. HERMAN: No, it was not.	23	issue on the -- I said it was moot, that issue.
24	MR. KAULAS: They haven't pleaded -- they	24	MR. KAULAS: Well, before we go further,
25	haven't amended the pleading, Judge. They haven't --	25	precisely what is The Court allowing Mr. Herman to

11 (Pages 38 to 41)

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	42		44
1	do, and what is Mr. Herman doing? Is Mr. Herman --	1	grant a motion, either/or motion without any
2	THE COURT: Mr. Herman stated -- what it is	2	pleading whatsoever, our position is that's
3	that you want and then I will -- I will state what it	3	inappropriate because we can't possibly respond to an
4	is I'm granting.	4	either/or. But since that's what The Court has done,
5	MR. HERMAN: Okay. Judge, the cases that I	5	I have got to respond to each one.
6	cited to you, I want to be sure that, in particular,	6	If The Court is granting a motion to
7	the first one there, Palm Beach County --	7	substitute a party, I'm not sure who is being
8	THE COURT: I don't need to hear the case	8	substituted for what. And I would ask Mr. Herman to
9	again. You already argued those.	9	inform us who he is substituting for.
10	MR. HERMAN: I want to --	10	THE COURT: Okay. Let me say this, just to
11	THE COURT: Check the language?	11	clarify it, if possible. As far as The Court is
12	MR. HERMAN: Yes, I do. That's exactly right.	12	concerned, based on the answer to Interrogatories 1
13	Yeah. What was filed there and granted was a motion	13	and 2, Keller Ladders, Inc. and Keller Industries,
14	for leave to amend complaint to substitute party	14	Inc. are one in the same, as far as I'm concerned,
15	defendant, and in the alternative add a defendant.	15	by virtue of the fact that Keller Ladders, Inc.
16	That's what I would like to do here. And whether	16	assumed the liabilities of Keller Industries, Inc.
17	it's a success --	17	
18	THE COURT: Say it again.	18	So how the amendment is phrased, in order to
19	MR. HERMAN: Motion -- motion for leave to	19	accurately reflect that finding on my part is either
20	amend the complaint to substitute a party defendant,	20	adding Keller Industries, Inc. or merely stating
21	or in the alternative to add a party. That's my	21	that Keller Ladders, Inc. is a successor to the
22	motion. And it really requires granted or denied.	22	liabilities and to the responsibilities of
23	And you have already given your thoughts on the	23	Industries, Inc, Keller Industries, Inc.
24	record with regard to it being a successor	24	
25	corporation.	25	That's what I want to happen. That's the
			ruling on this case. So I'm going to just say that
			Keller Ladders, Inc. is a successor to the
	43		45
1	I just don't want to get caught up into that	1	liabilities of Keller Industries, Inc. by virtue of
2	actually being a factual scenario or not. But I can	2	the answers to the interrogatories of the Plaintiff 1
3	understand The Court's thinking based on the	3	and 2.
4	interrogatories, because quite frankly that's what I	4	And it did not seem that was ever an issue as
5	think, too. So the motion should just be granted --	5	to whether or not Keller Ladders, Inc. would be
6	THE COURT: In abundance with caution, I will	6	responsible in the event of a verdict, by virtue of
7	grant the motion and add to it and/or successor	7	the fact that it was not the actual manufacturer of
8	corporation.	8	the ladder.
9	MR. HERMAN: Thank you, Your Honor.	9	MR. KAULAS: By The Court's comment, The Court
10	THE COURT: It's covered in that standpoint.	10	is not allowing the plaintiff to add Keller
11	Okay. State the second part of the motion of	11	Industries, Inc. as a party defendant. The Court is
12	liability.	12	ruling that based upon answers to interrogatories,
13	MR. HERMAN: And the -- with respect --	13	The Court finds that KLI is responsible by virtue of
14	THE COURT: I'm sorry. Did that answer your	14	answers to interrogatories.
15	question?	15	THE COURT: Is the real party at interest in
16	MR. KAULAS: I've got a response to that,	16	this case by virtue of the answer to the
17	because obviously -- Mr. Herman hasn't completed his	17	interrogatories.
18	thought.	18	MR. HERMAN: This is the gamesmanship that
19	MR. HERMAN: All I was going to say is that	19	kind of, quite frankly, scares me with regard --
20	The Court didn't mention if you were denying that	20	THE COURT: I would like to state for the
21	portion of his motion with regard to this -- the	21	record, so if the appellate court looks it over they
22	different companies.	22	may say the form is not correct, but certainly the
23	THE COURT: That's correct.	23	substance is correct.
24	MR. HERMAN: Thank you.	24	MR. HERMAN: I understand. That's what we
25	MR. KAULAS: Okay. The first thing, is to	25	have been battling in here today ever since this case

12 (Pages 42 to 45)

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	46		48
1	was filed.	1	suing the appropriate defendant, which would have
2	THE COURT: They are not going to reverse ..	2	been Keller Industries, Inc. The answers to
3	if, in fact, they feel as I do that Keller Ladder,	3	interrogatories, if, in fact, they do create
4	Inc. was the real party at interest by virtue of	4	successor liability, create indemnity. Those answers
5	that agreement, which is not in dispute, which is	5	to interrogatories were never, if you will, converted
6	actually the substance that's been furnished by the	6	into a pleading, an amended pleading against my
7	defendant themselves, then they are not going -- I	7	client, in which it was alleged that my client was
8	don't believe, going to reverse me simply because I	8	responsible to the plaintiff by virtue of those
9	couldn't accurately articulate it, if the substance	9	answers to interrogatories.
10	of my ruling is fairly made and they can understand	10	
11	it.	11	Next, those answers to interrogatories were
12	MR. KAULAS: Okay.	12	never offered into evidence during the course of the
13	THE COURT: Okay.	13	case, before the trier of the fact, to determine
14	MR. KAULAS: The reason I'm asking, Judge, is	14	whether or not the trier of the fact would come to
15	because this add-on motion, once again, we have never	15	the same conclusion that The Court has come to. We
16	had a pleading. So as a result, I can't address the	16	do not believe that The Court, in essence, can stop
17	pleading which we have never had. I can't	17	the defense that the defendant has raised by saying
18	affirmatively object on the basis of a -- I can't	18	these answers to interrogatories allow a substitution
19	affirmatively respond to a pleading which I have	19	of a party defendant after the fact. But The Court
20	never seen.	20	is, in essence, ruling on an issue of indemnity
21	THE COURT: Well, I will state for the record	21	without any documentation whatsoever, which would
22	that you didn't seem to have any problem articulating	22	include the agreements between KU --
23	your argument by understanding it and knowing your	23	THE COURT: Indemnity doesn't apply in this
24	position, is that you object to any amendment because	24	case. I mean, indemnity comes by virtue of vicarious
25	-- for the reasons you have given today.	25	liability. In this case Keller Ladders, Inc.
			assumed that responsibility by virtue of their
	47		49
1	MR. KAULAS: Correct.	1	contract. So that's not vicarious. That's direct
2	THE COURT: Didn't seem to me you were	2	and real liability.
3	under any disability understanding what he was	3	MR. KAULAS: The Court -- The Court has never
4	attempting to do for lack of a written pleading.	4	seen the contract.
5	MR. HERMAN: Well, there is a written	5	THE COURT: I'm just going by what you
6	pleading.	6	described it.
7	THE COURT: I'm just saying, he has argued	7	MR. KAULAS: Well, the description of the
8	that there is not.	8	contract -- a description of the contract is not a
9	MR. KAULAS: There is no written pleading	9	contract. In order to plead a contract, one must
10	where the counsel has responded with --	10	attach a contract to a pleading, or at least plead
11	MR. HERMAN: I'm sorry. You're right. There	11	the substance thereof.
12	is a motion.	12	If, in fact, Mr. Herman's position was that
13	THE COURT: In answer to your statement, sir,	13	those answers to interrogatories created a cause of
14	you have articulated with great clarity your	14	action, then under those circumstances he should have
15	position, and I hope I have understood your position,	15	pledged it. He hasn't even pleaded it now. And
16	and so the lack of a written motion has not, to me,	16	therefore, we take the position that The Court is, in
17	prevented you from making your position well known to	17	essence, making a determination of contract liability
18	The Court.	18	without ever seeing the contract. And as we take the
19	MR. KAULAS: Fair enough. With reference to	19	position, the contract calls for the -- various
20	the -- The Court's ruling, we would object to the	20	things, including suing the appropriate party, which
21	ruling for the following reasons:	21	would be Keller Industries, Inc. and a demand by
22	Number 1, the answers to interrogatories do	22	Keller Industries, Inc. for indemnity, not a ruling
23	not, in our position, create successor liability, do	23	of indemnity, if you will, under circumstances which
24	not create indemnity. As a result, those answers to	24	we understand The Court has ruled.
25	interrogatories did not excuse the plaintiff from	25	THE COURT: You're not suggesting Keller

13 (Pages 46 to 49)

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	50		52
1	Ladders, Inc. didn't answer the interrogatory	1	extended six inches, a minimum of six inches. That
2	correctly by saying they assumed the responsibility.	2	was a fact that was required by physics. The ladder
3	I mean, I -- I'm just thinking the plain language of	3	couldn't possibly malfunction unless it was extended
4	the answer. That's all I'm looking at.	4	six inches.
5	MR. KAULAS: If, in fact, that is an	5	In this particular case, the only person that
6	appropriate interpretation of the interrogatory, then	6	hypothecated that the ladder was extended six inches,
7	it should have been pleaded. That's our position.	7	and the person that, if you will, suggested that the
8	THE COURT: Oh. Oh. Oh. You said I had to	8	ladder was extended six inches, was the plaintiff's
9	see the contract to know actually what it said, and	9	expert, John Morris. And Morris admitted that in
10	I'm just questioning that statement in view of the	10	order to have the ladder function as he claimed, it
11	fact that when you read the answer of the defendant,	11	must be extended six inches.
12	the plain language of the answer is that it assumed	12	The plaintiff testified unequivocally that he
13	the liability. So I don't need to read the -- read	13	never extended the ladder at all. Unequivocally. He
14	the contract in order to understand what they are	14	never extended the ladder at all. Thus the
15	telling me now. If they are telling me that and it's	15	testimony, we move to -- to strike the testimony of
16	not correct, I should read the contract, that's	16	John Morris as being conjecture. The Court denied
17	something else. But I'm not going to do that.	17	that motion. We reasserted the same motion at the
18	MR. KAULAS: I understand that. But I think	18	end of all the evidence, and that was denied.
19	it assumes certain liabilities.	19	The law, as I understand it, is clear that an
20	MR. HERMAN: Judge, one last thing. Since,	20	expert's testimony can only be based upon
21	based on the proceedings, in terms of the precisioness	21	uncontradicted evidence. And in this particular
22	that Mr. Kaulas -- may I approach?	22	instance, the uncontradicted evidence, according to
23	THE COURT: Let me give you a little hint.	23	the plaintiff, the only actual witness was that he
24	When you're ahead, don't --	24	never extended the accident ladder.
25	MR. HERMAN: I understand, Judge. I'm not	25	Now, there was conflicting evidence as to
	51		53
1	going to re-argue anything. The only thing I need	1	whether or not the ladder telescoped. There were two
2	added to the order is that this amendment relates	2	eyewitnesses who said the ladder telescoped. And the
3	back to the initial time that we were filing,	3	defense expert's hypothecated that that was unlikely
4	pursuant to all those cases.	4	based upon his reconstruction. The fact that there
5	THE COURT: Okay. The next issue.	5	were three witnesses that testified the ladder
6	MR. KAULAS: Excuse me. We would object. You	6	telescoped, the plaintiff and two others, is
7	can't relate a pleading back to the beginning of time	7	irrelevant to the issue of liability. The issue of
8	without any legal justification.	8	liability was not based upon the concept that the
9	MR. HERMAN: It wasn't the beginning of time.	9	ladder, if extended, could telescope. The theory of
10	You know what? Quite frankly --	10	liability was that the ladder had to be extended six
11	THE COURT: The law says that.	11	inches, and then telescoped.
12	MR. HERMAN: -- the law -- if you had some law	12	In order to telescope the ladder, all one has
13	to support those contentions --	13	to do is extend the ladder two-and-a-half inches.
14	THE COURT: Argue to me, please.	14	Thus, the plaintiff's theory that the ladder
15	MR. HERMAN: The cases I have given you all	15	telescoped, the evidence that the ladder telescoped
16	talk about the Relation Back Doctrine.	16	was not inconsistent with the fact that the plaintiff
17	THE COURT: I don't even have to put that in	17	may have extended the ladder two-and-a-quarter
18	the order. I mean, it's just understood legal maxim	18	inches. But the liability would not attach to that
19	that relates back to the original complaint.	19	factual situation, regardless of the circumstances.
20	MR. HERMAN: Thank you, Your Honor.	20	The plaintiff simply extended the ladder
21	THE COURT: Okay. The next argument, please.	21	two-and-a-quarter inches, and the ladder telescoped.
22	MR. KAULAS: The next argument deals with the	22	The liability claim being made did not come --
23	-- The Court may recall that the theory of liability	23	come into focus. It was not part and parcel of the
24	in the case was -- required a certain fact. A theory	24	evidence in the case. So therefore, the expert's
25	of liability required that the accident ladder be	25	testimony, in our opinion, should have been stricken,

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1	and the theory of liability, of course, should have 2 been dismissed, since the physics could not possibly 3 have been created in order to support the theory 4 of liability.	1	those circumstances, we believe it was error for The 2 Court to allow the evidence of the quick latch in.
5	Thank you.	3	THE COURT: Thank you. Well, I believe then, 4 and I believe now it was sufficient evidence to 5 create issues of fact for the jury to determine. So 6 the motion is denied. Okay. I have got this final 7 judgement. Have you seen this final judgement? The 8 question is, can I sign it in its present form, or 9 should we wait --
6	THE COURT: Thank you, sir.	10	MR. HERMAN: Judge, I would rather wait and I 11 will resubmit.
7	MR. HERMAN: Judge, this will be a brief	12	THE COURT: So resubmit a judgement, give him 13 a copy of it, and with an opportunity to object to 14 its form, not agree to it as such because he's made 15 an argument quite clear on that. And if you would 16 take your cases back so I don't have to --
8	response. Mr. Kaulas ignores what the jury heard and 9 saw. There were two witnesses, if you remember, that 10 heard the ladder telescope, and also after the fact 11 saw that the ladder was in a, lack of a better word, 12 somewhat of a telescoped position. The only way that 13 can happen is that if at some point it's extended, 14 and then the ladder telescopes like it did from the 15 roof.	17	MR. SACHS: Judge, I want to give you an 18 order. I just want to show it to Mr. Herman denying 19 our motion for a JNOV. It's very simple.
16	And not only that. Mr. Kaulas' argument 17 completely ignores the fact that this ladder did not 18 come with a fly-lock lock, a quick-latch foot, is 19 what we called it. And we showed the jury a 20 Louisville Ladder that had a quick latch, which would 21 lock the ladder in place so that you could not extend 22 it from where Mr. McCormack was.	20	THE COURT: Okay. That's fine.
23	So that being the case, the jury has spoken. 24 They considered the evidence. And I don't think 25 there's any basis in this record to either strike	21	MR. HERMAN: Okay.
		22	THE COURT: Now, I see in there that -- is 23 this okay to sign this, gentlemen?
		24	MR. SACHS: Yeah. I just gave it to 25 Mr. Herman.
	55		57
1	Mr. -- Dr. Morris as a witness or to grant this 2 judgment NOV based on those contentions by the 3 defendant. Thank you.	1	MR. HERMAN: The order? Yes.
4	THE COURT: Okay. Anything else?	2	THE COURT: I see also the order retains 3 jurisdiction for the establishment of costs. And if 4 you can't agree to what the costs are, you don't have 5 to come back here in a hearing. We can set it up on 6 a telephone conference.
5	MR. KAULAS: Yes. Obviously the quick latch 6 argument, the quick latch was no evidence -- not only 7 no evidence. The evidence was that the quick latch 8 was not manufactured until after this ladder -- the 9 subject ladder was manufactured. That was Number 1. 10 The patent was applied for before this particular 11 ladder was manufactured.	7	MR. HERMAN: Okay.
12	But most importantly, in order to utilize a 13 quick latch, one would have to have some access to 14 the patent, some access to license. There was no 15 evidence whatsoever that Louisville, the holder of 16 the patent, licensed this, agreed to license it, or 17 did anything with reference to licensing.	8	THE COURT: For that purpose -- unless you 9 want to come down here to Pinellas County. It's a 10 very pretty county. We've got some of the best 11 beaches in the world.
18	So our position at the time, of course, was 19 The Court erred by allowing this device into evidence 20 when there was no -- there was nothing to suggest 21 that the defendant would have even the right to use 22 such a thing if, in fact, they chose to do so. And 23 of course, there was no evidence that such -- by any 24 witness in the case that anybody had ever seen the 25 application for the patent. So therefore, under	12	MR. KAULAS: Your Honor, I wish to file this 13 at my -- my affidavit with the list.
		14	THE COURT: That's fine. I am going to let it 15 be received.
		16	MR. HERMAN: Over still -- my objection.
		17	THE COURT: Over your objection. I haven't 18 got a clerk here, so I will give it to the clerk.
		19	MR. HERMAN: Okay.
		20	THE COURT: Well, this file is in Broward 21 County, so I'm going to write on here, accepted for 22 filing on 3/27/06 by Senior Circuit Judge Robert E. 23 Beach, and then you send this to the clerk's office 24 in Broward County.
		25	MR. SACHS: I will do a notice of filing on

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1	it, Is what I will do.	1	CERTIFICATE OF REPORTER
2	THE COURT: That's fine.	2	
3	MR. SACHS: I guess the same thing regarding	3	STATE OF FLORIDA
4	your order denying our motion. When he brings it	4	COUNTY OF HILLSBOROUGH
5	back, I will file the original in Broward.	5	
6	THE COURT: That's fine.	6	I, AMY T. DesCHENES, certify that I was authorized
7	MR. SACHS: Is that okay with you?	7	and did stenographically report the foregoing deposition; and
8	MR. HERMAN: I didn't hear what you said.	8	that the transcript is a true record of the testimony given
9	THE COURT: Thank you, gentlemen.	9	by the witness.
10	MR. KAULAS: Thank you judge.	10	
11	THE COURT: It was an interesting case, and I	11	I further certify that I am not a relative, employee,
12	will look forward to reading it in the Southern	12	attorney, or counsel of any of the parties, nor am I a
13	Reporter.	13	relative or employee of any of the parties' attorneys or
14	THE COURT REPORTER: Do you need it	14	counsel connected with the action, nor am I financially
15	transcribed, Mr. Sachs?	15	interested in the action.
16	MR. SACHS: Yes.	16	Dated this _____ day of _____, 2006.
17	THE COURT REPORTER: And would you like a mini	17	
18	or ASCII?	18	_____
19	MR. SACHS: Mini.	19	AMY T. DESCHENES
20	THE COURT REPORTER: And send it to you?	20	COURT REPORTER
21	MR. SACHS: You can send it to me.	21	
22	THE COURT REPORTER: Would you like a copy,	22	
23	sir?	23	
24	MR. HERMAN: Not yet.	24	
25	(Whereupon, the proceedings were concluded at	25	
		59	
1	10:27 a.m.)		
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